TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 184.

THE UNITED STATES, APPELLANT,

vs.

JOHN SMITH.

APPEAL FROM THE COURT OF CLAIMS.

FILED JANUARY 28, 1904.

(19222.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 571.

THE UNITED STATES, APPELLANT,

vs.

JOHN SMITH.

APPEAL FROM THE COURT OF CLAIMS.

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1 In the Court of Claims.

JOHN SMITH
vs.
THE UNITED STATES. } No. 21636.

I.—*Petition and amended petitions.*

On the 27th day of December, 1899, the claimant filed his preliminary petition, and on the 24th day of March, 1900, by leave of court the said claimant filed his first amended petition, to which on the 27th day of March, 1900, the defendants filed their demurrer.

On the 3d day of November, 1900, the claimant by further leave of court filed his second amended petition, in lieu of former petitions, which is as follows:

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Second amended petition. Filed Nov. 3, 1900.

The claimant, John Smith, respectfully represents that:

1. He enlisted for three years in the Navy of the United States on the 12th day of November, 1897, and pursuant to such enlistment was, at the time of the matters and things hereinafter set forth, an enlisted fireman, 1st class, in said Navy, and as such entitled to receive from the United States the sum of $35 per month.

2. While so serving he was, on May 26, 1899, charged with (merely) "refusing to do duty;" was thereupon put under arrest for trial on board a vessel belonging to the Navy, and was continuously kept so under arrest from May 26th until July 5th, 1899, when he was tried by a naval general court-martial on the sole charge of "refusing to obey the lawful order of his superior officer," in violation of art. 4, sect. 1624, Rev. Stat. No entry upon any ship's log alleged an offense against him other than a violation of art. 8, sect. 1624, R. S. Yet he was sentenced, on the said charge of violating art. 4, sect. 1624, R. S., to lose $376 of his pay, accruing between July 7, 1899, and July 7, 1900, and meanwhile to labor for the United States. Claimant performed such service until $200 of his pay has been withheld. The sole offense, if any, for which he was kept in arrest and tried as aforesaid was committed prior to the beginning of said arrest.

3 3. Said court-martial had no authority to try said charge, with its specification, in that no true copy of any statement of said charge and specification, or any report or other document containing them, was furnished him either before or at the time of his close arrest or confinement on them had exceeded 10 days, and had been recognized as an arrest for trial both by express admission or order and by lapse of time. (Art. 24 and 43, sect. 1624, Rev. Stat.) The log-book account of claimant's arrest and notification of charges, as filed by the Navy Department

in this case, July 17th, 1900, is herewith made a part of this petition. Other than is shown there and stated herein no prerequisites to trial, enjoined by art. 43, sect. 1624, Rev. Stat., were complied with at any time in behalf of claimant, and for the sole reason that naval regulations require furnishing a copy of the accusation to a prisoner only when the "person accused" is an officer (art. 1039, 1037, 1035, Navy Reg. of 1896).

4. The said sentence was null and void because it was adjudged upon a charge and specification which were other (and graver) than those a copy of which was furnished him at any time when he was put under arrest, and because there was no judgment by said court-martial either that intelligence of such other charge had not reached the officer ordering the court when the accused was put under arrest, or that some witness material to the support of such charge was at that time absent and could be produced at the trial. Claimant was deprived, from May 26th until July 1st, 1899, of a written voucher of any and all charges, specifications, and accusations against him.

4 No reason appeared to said court-martial for such withholding of notice and voucher other than that, by the partiality of regulations drafted by a fellow naval officer, influential and intelligent commissioned officers are required to be guarded from surprise through corrupt (or innocently unfair) alterations or additions to charges, while uninfluential "enlisted men" are not so protected, though subject to being charged, tried, and sentenced while without counsel, unable to get counsel, and denied counsel. (See the approved court-martial record in Gaynor, v. U. S., 21183 Ct. of Cl.)

5. There is due complainant the sum of $200 for pay as aforesaid, which is wrongfully withheld from him because of the pretended judgement of said pretended court-martial and for no other cause whatsoever.

Wherefore he says that there is justly due him the sum of $200, for which he demands judgement.

Claimant is the sole owner of this claim, has not assigned it to any extent, is justly entitled to said $200 from the United States, is a citizen thereof, has never been disloyal thereto and believes the foregoing allegations to be true. No action has been had on this claim in Congress or in any of the Departments.

George F. Ormsby, being duly sworn, does say: I am attorney for the claimant and believe the facts as stated in this petition to be true.

GEORGE F. ORMSBY.

Subscribed and sworn to before me this 3rd day of November, 1900.

A. LAW,
Commissioner of the Court of Claims.

5 II.—*Demurrer to second amended petition. Filed November 24, 1900.*

JOHN SMITH, v. UNITED STATES. } No. 21636.

And now come the said defendants, by their Attorney-General, and, demurring to the second amended petition in this cause, state as the ground thereof that the petition does not allege facts sufficient to constitute a cause of action.

L. A. PRADT,
Asst. Attorney-General.

Filed November 24, 1900.

III.—*Argument on demurrer.*

At a Court of Claims held December 3d and 4th, 1900, this cause was argued and submitted on the aforesaid demurrer.

6 IV.—*Opinion of the court, and dissenting opinion. Filed April 22, 1901.*

NOTT, Ch. J., delivered the opinion of the court.

This case presents the question whether an enlisted fireman in the Navy has been lawfully deprived of his lawful pay by the sentence of a court-martial. Questions of military law, or the proceedings of military courts, rarely come before civil courts for review or as subjects of adjudication, but there are some general principles applicable to all cases which it is always well, when a court is passing upon the action of a court-martial, to keep prominently in view.

In Dinsman v. Wilkes (12 Howard R., 390, 403) the Supreme Court said:

"It must be borne in mind that the nation would be equally dishonored if it permitted the humblest individual in its service to be oppressed and injured by his commanding officer from malace or ill-will or the wantonness of power."

And the Supreme Court said, in Dynes v. Hoover (20 Howard R., 65, 81):

"Persons, then, belonging to the Army and the Navy are not subject to illegal or irresponsible courts-martial, when the law for convening them and directing their proceedings of organization and for trial have been disregarded. In such cases everything which may be done is void—not voidable, but void; and civil courts have never failed, upon a proper suit, to give a party redress who has been injured by a void process or void judgment. In England it has been done by the civil courts ever since the passage of the 1 Mutiny Act of William and Mary, ch. 5, 3d April, 1689. And it must have been with a direct reference to what the law was in England that this court said, in Wise v. Withers (3 Cr., 337), that in such a case 'the court and the officers are all trespassers.' When we speak of proceedings in a cause, or for the organization of the court and for trials, we do not mean mere irregularity in practice on the trial, or any mistaken rulings in respect to evidence or law, but of a disregard

of the essentials required by the statute under which the court has been convened to try and to punish an offender for an imputed violation of the law."

The Supreme Court again said, in Runkle v. United States (122 U. S. R., 543, 555, 558):

"A court-martial organized under the laws of the United States is a court of special and limited jurisdiction. It is called into existence for a special purpose and to perform a particular duty. When the object of its creation has been accomplished it is dissolved. (3 Greenl. Ev., sec. 470; Brooks v. Adams, 11 Pick., 441, 442; Mills v. Martin, supra; Duffield v. Smith, 3 S. & R., 590, 599.) Such, also, is the effect of the decision of this court in Wise v. Withers (3 Cranch, 331), which, according
7 to the interpretation given it by Chief Justice Marshall in Ex parte Watkins (3 Pet., 193, 207), ranked a court-martial as 'one of those inferior courts of limited jurisdiction whose judgments may be questioned collaterally.' To give effect to its sentences, it must appear affirmatively and unequivocally that the court was legally constituted; that it had jurisdiction; that all the statutory regulations governing its proceedings had been complied with, and that its sentence was conformable to law. (Dynes v. Hoover, 20 How., 65, 80; Mills v. Martin, 19 Johns., 33.) There are no presumptions in its favor so far as these matters are concerned. As to them, the rule announced by Chief Justice Marshall in Brown v. Keene (8 Pet., 112, 115) in respect to averments of jurisdiction in the courts of the United States applies. His language is: 'The decisions of this court require that averment of jurisdiction shall be positive—that the declaration shall state expressly the fact on which jurisdiction depends. It is not sufficient that jurisdiction may be inferred, argumentatively, from its averments.' All this is equally true of the proceedings of courts-martial. Their authority is statutory, and the statute under which they proceed must be followed throughout. The facts necessary to show their jurisdiction and that their sentences were conformable to law must be stated positively; and it is not enough that they be inferred argumentatively.

"Undoubtedly the President, in passing upon the sentence of a court-martial, and giving to it the approval without which it can not be executed, acts judicially. The whole proceeding from its inception is judicial. The trial, finding, and sentence are the solemn acts of a court organized and conducted under the authority of and according to the prescribed forms of law. It sits to pass upon the most sacred questions of human rights that are ever placed on trial in a court of justice; rights which, in the very nature of things, can neither be exposed to danger nor subjected to the uncontrolled will of any man, but which must be adjudged according to law."

On the 17th July, 1862, Congress passed two statutes (12 Stat. L., p. 594; ib., pages 600–604, article 15), the one relating to the arrest and imprisonment of officers in the Army, the other to the arrest and imprisonment of persons in the Navy.

These statutes were passed in the midst of a great war; and concerning the circumstances which surrounded the former statute and led to its enactment, Mr. Blaine has said:

"In answer to the call upon the President for information, Mr. Lincoln sent a message to the Senate on the 1st of May, saying, 'General

Stone was arrested and imprisoned under my general authority, and upon evidence which, whether he be guilty or innocent, required, as appears to me, such proceedings to be had against him for the public safety.' The President deemed it 'incompatible with the public interest, and perhaps unjust to General Stone, to make a particular statement of the evidence.' After saying that General Stone had not been tried because the officers to constitute a court-martial could not be withdrawn from duty without serious injury to the service, the President gave this public assurance: 'He will be allowed a trial without unnecessary delay. The charges and specifications will be furnished him in due season, and every facility for his defense will be afforded him by the War Department.' This
8 message on its face bears evidence that it was prepared at the War Department, and that Mr. Lincoln acted upon assurances furnished by Mr. Stanton. The arrest was made upon his 'general' authority, and clearly not from any specific information he possessed. But the effect of the message was to preclude any further attempt at intervention by Congress. Indeed, the assurance that General Stone should be tried 'without unnecessary delay' was all that could be asked. But the promise made to the ear was broken to the hope, and General Stone was left to languish without a word of intelligence as to his alleged offense, and without the slightest opportunity to meet the accusers who, in the dark, had convicted him without trial, subjected him to cruel punishment, and exposed him to the judgment of the world as a degraded criminal.

"Release from imprisonment came at last by the action of Congress, coercing the Executive Department to the trial or discharge of General Stone. In the act of July 17, 1862, 'defining the pay and emolument of certain officers,' a section was inserted declaring that 'whenever an officer shall be put under arrest, except at remote military posts, it shall be the duty of the officer by whose orders he is arrested to see that a copy of the charges shall be served upon him within eight days thereafter, and that he shall be brought to trial within ten days thereafter unless the necessities of the service prevent such trial; and then he shall be brought to trial within thirty days after the expiration of said ten days, or the arrest shall cease.'" (Twenty Years of Congress, vol. 1, p. 390.)

The statute relating to the Navy is without qualification, broader and more imperative in terms. It has since found its way into the Revised Statutes with no substantial change of phraseology, where it stands in these words:

"The person accused shall be furnished with a true copy of the charges, with the specifications, at the time he is put under arrest; and no other charges than those so furnished shall be urged against him at the trial, unless it shall appear to the court that intelligence of such other charge had not reached the officer ordering the court when the accused was put under arrest, or that some witness material to the support of such charge was at that time absent and can be produced at the trial; in which case reasonable time shall be given to the accused to make his defense against such new charge." (Rev. Stat., 1624, art. 43, p. 283.)

This statutory provision, moreover, is a revision in 1862, of one of the original rules and regulations for the government of the Navy, in these words:

"All charges on which an application for a general court-martial is founded shall be exhibited in writing to the proper officer, and the person demanding the court shall take care that the person accused be furnished with a true copy of the charges, with the specifications, at the time he is put under arrest; nor shall any other charge or charges than those so exhibited be urged against the person to be tried before the court, unless it appear to the court that intelligence of such charge had not reached the person demanding the court when the person so to be tried was put under arrest, or that some witness material to the support of such charge, who was at that time absent, can be produced; in which case reasonable time shall be given to the person to be tried to make his defense against such new charge." (Act 23d April, 1800, 2 Stat. L., pp. 50–51, art. 38.)

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The imperative words here are that "the person demanding the court shall take care that the person accused be furnished with a true copy of the charges," not that the court-martial shall take care. Moreover, the Attorney-General had decided in 1845, in the case of Captain Voorhees (4 Opns., pp. 410–414), that this provision of law applied only to cases where charges were preferred by one person against another. The language that the charges "shall be exhibited in writing to the proper officer," i. e., the officer who had power to order the court-martial, and that "the person demanding the court shall take care that the person accused be furnished with a true copy of the charges," fully sustains the construction given to it by the Attorney-General. In a word, while General Stone's arrest was receiving legislative attention and inquiry, Congress determined to change and reenact the navy article of 1800, and that change at that time must have been founded upon a legislative purpose.

In the present case it does not appear either by the record or dehors the record that the claimant was ever furnished with a copy of the charges. The nearest approach to furnishing him with a copy of the charges was, as appears by the log book, that on the 1st of July the judge-advocate of the coming court-martial read specifications to J. Smith. The prisoner had then been in close confinement since the 26th of May, under an order directing that "he be kept in single irons for safe-keeping to await trial by general court-martial."

The claimant has set up a good cause of action; that the defendants are indebted to him for wages in the amount of $200; and the defendants by their demurrer have confessed that much. The petition sets forth what are probably all the material facts of the case, and the defendants have confessed those facts so far as properly pleaded, likewise by their demurrer. If the record of the court-martial contains anything which will avail the defendants as a defense in this suit it was in their possession, and it was for them to bring it in and set it up as a defense to the claimant's cause of action. They not having done so, we must infer one substantial fact to be conceded, namely, that the claimant, who was arrested on the 26th of May and tried on the 5th of July, was never furnished with a copy of the charges and specifications upon which he was tried.

The question therefore presented to the court by this case is whether the act of 1862—that is to say, article 43, Revised Statutes—is mandatory or directory; whether the requirement "that the person accused shall be furnished with a true copy of the charges," and that "no other charges than those so furnished shall be urged against him at the trial," is jurisdictional.

The supreme Court, in the case of Dynes v. Hoover (20 How. R., 65-79), seems impliedly to have answered that question. The plaintiff's cases there rested upon his alleged want of jurisdiction in the court-martial. The Supreme Court held that the court-martial had jurisdiction, and its opinion enumerates the statutory requisites. Among these is placed the thirty-eighth article of 1800, which, says the court, provides "that charges shall be made in writing, which was done in this case. The court was lawfully constituted, the charge made in writing, and Dynes appeared and pleaded to the charge."

When so careful and learned a judge as Mr. Justice Wayne, after stating the law, is careful twice to state the fact that the charge was made in writing and that the prisoner "appeared and pleaded to the charge," it is plain that the Supreme Court regarded the charges and specifications prescribed by the statute as analogous to an indictment in an ordinary criminal case.

The act of 1800, as has been stated, was neither so broad nor so imperative as the provision in the Revised Statutes. With this decision of the Supreme Court before us, concerning the narrower and weaker statute, it is impossible for this court to hold that the provision in the Revised Statutes really means nothing at all. For, to say now in the face of that statute that an officer or seaman in the Navy can be arrested by his commanding officer; that he can be kept in close confinement for as long a time as General Stone was, without charges being preferred against him; that he can be carried to the other side of the world from the spot where the alleged offense was committed, and be first informed of it when the charges against him are read during the proceedings of the court-martial, would be to say that Congress had made no provision whatever for preserving the personal rights and liberties of the officers and men in the American Navy.

Mariners, whether in the merchant service or in the Navy, are, in the words of Story (1 Eq. Juris., 332), "a strangely improvident class of men, who seem to have mixed up in their character qualities of very opposite natures, and who seem, from their habits, to require guardianship during the whole course of their lives, having at the same time great generosity, credulity, extravagance, heedlessness, and bravery." "Courts of equity," he adds, "are always supposed to take an indulgent consideration of their interests and to treat them in the same light with which young heirs and expectants are regarded. Hence it is that contracts of seamen respecting their wages and prize money are watched with great jealousy, are generally relievable whenever any inequality appears in the bargain, or any undue advantage has been taken." Lord Stowell in the leading case of the "Juliana" (2 Dodson, 504), held that they should be relieved from the consequences of their own act, that of signing shipping articles whereby their wages might be inequitably forfeited.

And there is good reason for this; for sailors when on shipboard are beyond the reach of a writ of habeas corpus; are without legal advice,

and in the preparation of a defense without professional assistance, and on trial they come very near to being practically defenseless; for a judge-advocate, like other men, can not well serve two masters. In courts of equity, and in courts of admirality, and in legislative halls sailors have always been more or less subjects of protective jurisprudence or protective legislation, and to deprive a seaman of his wages one must proceed according to law and equity. In civil life a man can not be deprived of life, liberty, or property, except by due process of law. In the Army and Navy the proceedings are different, the safeguards are less assured, but the principle is the same. Neither Congress or the courts have
11 ever sanctioned arbitrary arrests or illegal imprisonment or the deprivation of a statutory right. And among the statutory rights which the military or naval prisoner has is that of being promptly informed of the offense whereof he stands accused. An entry on the log is not notice to the prisoner, for he has not access to the log. In the present case the seaman has been deprived of his wages; that is to say, of his property, and this court can not say that it has been done according to the plain and just purpose of the statute, which was intended to guard the personal rights of officers and men in the Navy.

Other important questions were presented to the court by the counsel for the claimant on the argument, but the decision is confined to the question of jurisdiction above considered.

The judgment of the court is that the demurrer of the defendants be overruled, and that the claimant recover the amount conceded to be due, $200.

With leave nevertheless to the defendants to plead to the petition within thirty days, in which case the judgment now entered will be vacated and set aside.

PEELLE, J., dissents:

I dissent from the conclusion of the majority of the court, though I heartily concur in all that is said in the opinion concerning the sacredness of the rights of seamen and of their exemption from illegal or irresponsible courts-martial, but I do not believe that the failure to furnish the claimant with a copy of the charges on which he was tried is jurisdictional. He went to trial without objection, and by doing so waived his right to such copy. (Lisle v. State, 6 Mo., 426; Smith v. State, 8 Ohio, 294; State v. Johnson, Walk. (Miss.), 392; Loper v. State, 3 How. (Miss.), 429.)

In the case of Dynes v. Hoover (20 How., 65, 82) the court, in speaking about the law for convening and directing the proceedings of courts-martial, say: "When we speak of proceedings in a cause or for the organization of the court and for trials, we do not mean mere irregularity in practice on the trial, or any mistake in rulings in respect to evidence or law, but of a disregard of the essentials required by the statute under which the court has been convened to try and to punish an offender for an imputed violation of law."

Again, in the case of Ex parte Reed (100 U. S. R., 13), where the court had jurisdiction of the subject-matter and the person of the defendant, the court said: "Having had such jurisdiction, its proceedings can not be collaterally impeached for any mere error or irregularity, if there were such, committed within the sphere of its authority. Its judgments,

when approved as required, rest on the same basis and are surrounded by the same considerations which gave conclusiveness to the judgments of other legal tribunals, including as well the lowest as the highest under like circumstances. The exercise of discretion within authorized limits can not be assigned for error and made the subject of review by an appellate court." See, also, In re McVey (23 Fed. Rep., 878); Dynes v. Hoover (supra).

Nor has any court the right to interfere with courts-martial in the performance of their duty. (Wales v. Whitney, 114 U. S. R., 564, 570.)

In that same case it was said: "The civil courts can relieve a
12 person from imprisonment under order of such court only by writ of habeas corpus, and then only when it is made apparent that it proceeds without jurisdiction." See also Keys v. The United States (109 U. S. R., 336).

If, therefore, the court had jurisdiction of the subject-matter and of the person of the defendant and complied with the rules prescribed by law for the exercise of its functions, its judgments can not be reviewed by this court.

The Congress is authorized by Article I, section 8, of the Constitution "to make rules for the government and regulation of the land and naval forces;" and by the fifth amendment to the Constitution it is provided that "No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land and naval forces, or in the militia, when in actual service or in time of war or public danger." * * *

By virtue of those provisions, the Congress have authorized courts-martial for the purpose of administering justice through military channels, and when the defendant enlisted in the Navy he not only thereby surrendered his right to be tried by the civil courts but subjected himself to the jurisdiction of courts-martial.

The record of the proceedings of the court-martial is not made part of the petition, and under the rule that where a pleading is ambiguous or susceptible of different interpretations, that construction shall be adopted which is most unfavorable to the party pleading.

There is no averment that the court was illegally convened or any facts disclosed which would warrant such a conclusion or that the court had not jurisdiction of the subject-matter. There is no averment that the charges against the accused were not in writting properly set forth in the court's proceedings. On the contrary, the log book of the vessel show that the judge-advocate read to the accused the specifications as stated in the court's opinion (ante, p. –). It appears from the averments that the claimant was arrested for "refusing to do duty," while it is averred that he was tried for "refusing to obey the lawful order of his superior officer," but the charges are the same in substance, only being stated in different language. The accused could not have been guilty of "refusing to do duty" except in disobedience of his superior officer who had the right to command him, and hence no question of jurisdiction can be assigned for mere matter of form.

In the opinion of the majority of the court it is said: "Other important questions were presented to the court by the counsel for the claimant on the argument, but the decision is confined to the question of jurisdiction above considered." That is to say, the question of jurisdiction

arising from the failure to furnish the accused with a copy of the charges and specifications against him as provided by article 43, Revised Statutes, section 1624.

That article provides in substance that such copy shall be furnished the accused at the time of his arrest; and the logic of the court's opinion is that if not so furnished the court is without jurisdiction of the person of the accused, although he went to trial without objection.

That same article (43, supra), however, also provides that the accused may be tried on a charge other than the one on which he was arrested if it "shall appear to the court that intelligence of such other charge had not reached the officer ordering the court when the accused was put under arrest, or that some witness material to the support of such charge was at that time absent and can be produced at the trial; in which case reasonable time shall be given to the accused to make his defense against such new charge," thus showing that the only purpose of the statute was to give the accused reasonable time within which to prepare his defense; and such reasonable time is a question within the discretion of the court and can not be made jurisdictional.

The averments in the petition are somewhat confusing, but from the opinion of the majority of the court the question of jurisdiction arises under article 43 (supra) for failure to furnish the accused with a copy of the charges against him at the time of his arrest, and upon that theory I have considered the case and reached the conclusion that the demurrer should be sustained and the petition dismissed.

13 V.—*Judgment on demurrer.*

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At a Court of Claims held in the city of Washington on the 22d day of April, 1901, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the claimant, and do order, adjudge, and decree that the claimant, John Smith, have and recover of and from the United States the sum of two hundred dollars ($200).

BY THE COURT.

14 VI.—*Traverse filed by the defendants. April 30, 1901.*

In the Court of Claims of the United States. December term, A. D. 1900.

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And now comes the Attorney-General, on behalf of the United States, and, answering the petition of the claimant herein, denies each and every allegation therein contained and asks judgment that the petition be dismissed.

FELIX BRANNIGAN,
For the Assistant Attorney-General.

Filed by permission of the court in accordance with the opinion of the Chief Justice filed Apr. 22, 1901.
Filed April 30, 1901.

F. B.

VII.—*Argument and submission on merits.*

On the 4th and 9th days of December, 1902, this case was argued and submitted on the merits.

15 VIII.—*Order of court vacating judgment on demurrer, &c.*

At a Court of Claims held February 2, 1903, it was ordered
That this case having been brought to trial upon the merits by both parties, without objection by either, the claimant's motion for judgment upon the demurrer, filed May 24, 1901, be overruled and that the judgment upon demurrer be vacated and set aside as of April 30, 1901.

BY THE COURT.

16 IX.—*Findings of fact and conclusion of law. Filed February 2, 1903.*

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

FINDINGS OF FACT.

I.

On the 20th of November, 1897, the claimant enlisted in the United States Navy as a fireman of the second class, to serve for three years from that date unless sooner discharged by proper authority. He served as such until discharged, as hereinafter shown; and there remains due to him pay amounting to $376, unless the same was legally forfeited to the defendants by the sentence of the court-martial hereinafter set forth.

II.

On May 26, 1899, he was serving under said enlistment as a fireman of the first class, attached to and on board the U. S. S. "Yorktown," a vessel of the United States naval force at that time on the Asiatic Station, the "Yorktown" being then at anchor in Iloilo Harbor, P. I. On the same day he was reported by his superior officer to the commanding officer of the vessel as having refused to do duty, and that commanding officer awarded him the following punishment, namely: Put him under sentries as a prisoner in single irons for safe-keeping, to await trial by general court-martial; and he was continuously held as a prisoner thereafter until July 5, 1899, when he was sent in the custody of a chief master at arms to appear for trial before a general court-martial then convened on board the U. S. S. "Princeton," at Cavite, P. I.

III.

June 30, 1899, a charge, in writing, of "refusing to obey the lawful order of a superior officer" was preferred against claimant by Rear-Admiral Watson, the commander in chief of the United States naval force on the Asiatic Station, which specified the said offense; and
17 on the same day, by order of the said commanding officer of the said U. S. S. "Yorktown," the claimant, with other enlisted men of her crew, was ordered in double irons for safe-keeping.

IV.

Also on the same day, June 30, 1899, the said commander in chief appointed a general court-martial and ordered it to convene on Monday, July 3, 1899, on board the U. S. S. "Monadnock," at Cavite, P. I., for the trial of such persons as might legally be brought before it.

V.

At 10.30 a. m., July 1, 1899, the claimant received a copy of the charge and specifications so preferred against him; and on the same day an extra watch was ordered to stand guard over him and other prisoners then held for trial by general court-martial.

VI.

On Wednesday, July 5, 1899, pursuant to an adjournment of Monday, July 3, the said general court-martial met on board the U. S. S. "Princeton" at Cavite, P. I., for the trial of the claimant, and he was brought before the court at 10 o'clock a. m., in charge of the chief master at arms of the U. S. S. "Yorktown."

VII.

The following is a true and complete copy of the record and the proceedings of the said general court-martial in the case of the claimant:

Record of the proceedings of a general court-martial, convened on board the U. S. S. "Princeton," by virtue of a precept signed by Rear-Admiral John C. Watson, U. S. Navy, commander in chief, United States naval force on Asiatic Station, a certified copy of which is appended, marked "A."

U. S. S. PRINCETON, CAVITE, P. I.,
10.00 a. m., Wednesday, July 5, 1899.

The court met pursuant to the adjournment of Monday, July 3rd, and proceeded with the trial of John Smith, fireman, first class, U. S. Navy.

Present: Commander Clifford H. West, U. S. Navy; Commander Charles C. Cornwell, U. S. Navy; Lieutenant-Commander Alexander McCrackin, U. S. Navy; Lieutenant Simon Cook, U. S. Navy; Lieutenant Albert N. Wood, U. S. Navy; Captain Charles G. Long, U. S. Marine Corps; First Lieutenant Smedley D. Butler, U. S. Marine Corps, members, and First Lieutenant Dion Williams, U. S. Marine Corps, judge-advocate.

The accused, John Smith, fireman, first class, U. S. N., appeared before the court, and, in reply to a question by the judge-advocate, stated that he did not desire counsel.

The precept and letter ordering the court to meet on board the U. S. S. "Princeton," certified copies of which are appended, marked
18 respectively "A" and "Ab," were read to the accused by the judge-advocate.

The accused was asked if he objected to any member present, and replied that he did not.

The judge-advocate was duly sworn by the president, and the members were severally duly sworn by the judge-advocate; all of which oaths were administered according to law, and in the presence of the accused.

In reply to an inquiry by the judge-advocate, the accused stated that he had received a copy of the charge and specifications preferred against him, 10.30 a. m. July 1st, 1899.

The court was cleared to examine the charge and specifications (original appended, marked "C") and to consider all matters preliminary to the trial.

The doors being opened, the judge-advocate and the accused entered, and it was announced by the president that the court found the specifications in due form and technically correct.

In reply to an inquiry by the judge-advocate, the accused said that he was ready for trial.

All witnesses were directed to withdraw.

The judge-advocate read aloud a letter addressed to him, transmitting the charge and specifications preferred against John Smith, fireman, first class, U. S. N., original appended, marked "B."

The judge-advocate read aloud in the presence of the accused, the charge and specifications of charge preferred against him, and arraigned the accused as follows:

Q. John Smith, fireman, first class, U. S. N., you have heard the charge and specifications of charge preferred against you; how say you, to the specification of the charge, "Guilty or not guilty?"

A. "Not guilty."

Q. To the charge, "Guilty or not guilty?"

A. "Not guilty."

The prosecution began here.

George T. Brownridge, chief machinist, U. S. Navy, appeared as a witness for the prosecution, and was duly sworn by the president in the presence of the accused.

1. Question. What is your name, rate, and present station?

A. George T. Brownridge, chief machinist, U. S. Navy, U. S. S. "Yorktown."

2. Q. Do you recognize the accused; if so, as whom?

A. Yes; as First-Class Fireman Smith.

3. Q. What duty were you performing on the twenty-sixth day of May, this year?

A. Chief machinist, U. S. S. "Yorktown," at Iloilo.

4. Q. Did you detail the accused for any duty that day?

A. Yes, sir.

5. Q. What duty was it?
A. To stand watch.
6. Q. During which watch?
A. From twelve to four p. m.
7. Q. Did you tell the accused personally that he was detailed?
A. Yes, sir.

Cross-examined by the accused:

8. Q. In how many watches were the firemen standing?
19 A. In four, I think.
9. Q. When did I come off duty on the twenty-sixth day of May?
A. At eight o'clock a. m.
10. Q. Then, why was I detailed to stand the twelve to four watch if the firemen were in watch in four?
A. By order of the chief engineer a man going on liberty was second relief, you were to relieve him.
11. Q. What duty did I perform on that day from eight a. m. until noon?
A. Cleaning stations and bilges.
12. Q. Who was the man going on liberty in the second relief?
A. I don't remember.
13. Q. Who was the chief engineer at this time?
A. Chief Engineer Cleever; I beg pardon, that's a mistake, Mister Washington was chief engineer.
14. Q. Was I the next man for duty when I was detailed?
A. Yes; according to my orders.

Redirect examination by the judge-advocate:

15. Q. Did Mister Washington in giving you this order to detail the accused mention the name of the accused?
A. I had orders from Chief Engineer Cleever to appoint a second relief for a man going on liberty to take his watch. On this particular day Mister Cleever was not on duty. I told Mister Washington my orders, and he agreed with them—made no alterations.
16. Q. Was the detail of the accused a regular one?
A. Yes, sir; according to my orders.

The accused had no further questions to ask this witness.

The court had no questions to ask this witness.

There being no further questions to ask this witness, his testimony was read aloud to him and by him pronounced to be correct, and having been cautioned by the president not to discuss matters pertaining to the trial, he withdrew.

The court then took a recess until 1.00 p. m.

The court reassembled at the expiration of the recess. Present, all the members, the judge-advocate, and the accused.

Pope Washington, assistant engineer, U. S. Navy, appeared as a witness for the prosecution, and was duly sworn by the president in the presence of the accused.

Examination in chief by the judge-advocate:

1. Question. What is your name, rank, and present station?

A. Pope Washington; assistant engineer, U. S. Navy; attached to and serving on board the U. S. S. "Yorktown."

2. Q. Do you recognize the accused? If so, as whom?

A. I do; as J. Smith, fireman, serving on board the "Yorktown."

3. Q. What duty were you performing on the twenty-sixth day of May?

A. Officer of the deck of the U. S. S. "Yorktown," at anchor in Iloilo Harbor; also senior engineer officer on duty.

4. Q. Was the accused detailed for any duty on that day?

A. Yes; he was detailed to take the watch in the fire room from meridian to four p. m.

5. Q. Did he take the watch?

A. No.

20 6. Q. Why not?

A. He refused positively to do so.

7. Q. Was the accused ordered to take the watch, or not?

A. He was.

8. Q. By whom?

A. By the chief machinist on duty, and by myself.

9. Q. Was the accused regularly attached to the U. S. S. "Yorktown" at this time?

A. Yes.

The accused had no questions to ask this witness.

The court had no questions to ask this witness.

There being no further questions to ask this witness his testimony was read aloud to him and by him pronounced to be correct, and having been cautioned by the president not to discuss matters pertaining to the trial he withdrew.

The prosecution closes here.

The accused did not desire to call any witnesses, but submitted a written statement.

The court was cleared to examine it. The judge-advocate and the accused withdrew.

When opened, the judge-advocate and the accused entered and the accused was informed that the court was ready to hear his statement, and it was read by the judge-advocate and is appended, marked "1."

The defense closed here.

The judge-advocate submitted the case to the court without remark.

The trial was finished.

The judge-advocate at this point invited the attention of the court to the article of the U. S. Navy Regulations relating to the introduction of evidence of previous convictions, and requested that in case the court found the accused guilty of the charge, or guilty in a less degree than charged, the court be opened to receive evidence of previous trials and convictions, if such exist.

The court was cleared for deliberation, all the parties to the trial, the judge-advocate withdrawing, and, after maturely considering the evidence adduced, called the judge-advocate before it and directed him to

record that the court finds in the foregoing case of John Smith, fireman, first class, U. S. Navy, as follows:

The specification of the charge, "Proved."

And that the accused, John Smith, fireman, first class, United States Navy, is of the charge "Guilty."

The court was opened and the accused entered, and the president announced that the court was ready to receive evidence of previous convictions, as required by the U. S. Navy Regulations.

The judge-advocate then read aloud from the enlistment record of the accused two items, showing that the accused had been tried and convicted by summary court-martial. A copy of this much of the said enlistment record is appended, marked "2."

The court was then cleared to deliberate upon the sentence, the judge-advocate and the accused withdrawing, and after mature deliberation the judge-advocate was called before the court and directed to record the sentence of the court, as follows:

"To be confined in such place as the Secretary of the Navy may direct for a period of one year, to perform extra police duties during such confinement; to lose all pay that may become due him during
21 such confinement, except the sum of three dollars ($3.00) per month for necessary prison expenses, and a further sum of twenty dollars to be paid him at the expiration of his term of confinement, when he shall be dishonorably discharged from the United States Navy. Total loss of pay amounting to three hundred and seventy-six dollars ($376.00)."

C. H. WEST,
Commander, U. S. Navy, President of the Court.

CHARLES C. CORNWELL,
Commander, U. S. Navy, and Member.

ALEX. MCCRACKIN,
Lieutenant-Commander, U. S. Navy, and Member.

SIMON COOK,
Lieutenant, U. S. Navy, and Member.

A. N. WOOD,
Lieutenant, U. S. Navy, and Member.

CHAS. G. LONG,
Captain, U. S. Marine Corps, and Member.

SMEDLEY D. BUTLER,
First Lieutenant, U. S. Marine Corps, and Member.

DION WILLIAMS,
First Lieutenant, U. S. Marine Corps, Judge-Advocate.

The court then proceeded with the trial of John Skerry, corporal, U. S. Marine Corps.

C. H. WEST,
Commander, U. S. Navy, President of the Court.

DION WILLIAMS,
First Lieutenant, U. S. Marine Corps, Judge-Advocate.

FLAGSHIP BALTIMORE,
Manila, P. I., July 7th, 1899.

The proceedings, findings, and sentence in the foregoing case of John Smith, fireman, first class, United States Navy, are approved.

The U. S. S. "Yorktown" is designated as the place of confinement until an opportunity offers for sending him to the United States in a public conveyance.

J. C. WATSON,
Rear-Admiral, United States Navy, Commander in Chief,
United States Naval Force on Asiatic Station.

A.

UNITED STATES NAVAL FORCE ON ASIATIC STATION,
U. S. F. S. BALTIMORE,
Manila, P. I., June 30th, 1899.

To Commander CLIFFORD H. WEST,
U. S. Navy,
Commanding U. S. S. Princeton, Cavite, P. I.

By virtue of the authority vested in me as contained in article 38, section 1624, Title XV, chapter 10, of the Revised Statutes of
22 the United States, a general court-martial is hereby ordered to convene on board the U. S. S. "Monadnock," at Cavite, P. I., at 10.00 o'clock a. m. on Monday, July 3, 1899, or as soon thereafter as practicable, for the trial of John James Heggarty, coal passer, U. S. Navy, and of such other persons as may legally be brought before it.

The court is composed of the following members, any five of whom are empowered to act, viz: Commander Charles C. Cornwell, U. S. Navy; Lieutenant-Commander Alexander McCrackin, U. S. Navy; Lieutenant Simon Cook, U. S. Navy; Lieutenant Albert N. Wood, U. S. Navy; Captain Charles G. Long, U. S. Marine Corps; First Lieutenant Smedley D. Butler, U. S. Marine Corps, and of First Lieutenant Dion Williams, U. S. Marine Corps, as judge-advocate.

No other officers can be summoned without manifest injury to the service.

J. C. WATSON,
Rear-Admiral, United States Navy,
Commander in Chief, U. S. Naval Force on Asiatic Station.

I certify the above to be a true copy.

DION WILLIAMS,
1st Lt., U. S. M. C., J. A.

A B.

UNITED STATES NAVAL FORCE ON ASIATIC STATION,
FLAGSHIP BALTIMORE,
Manila, P. I., July 3, 1901.

SIR: The general court-martial of which you are president will hold its further session on board the U. S. S. "Princeton," at Cavite, P. I.

Very respectfully,

J. C. WATSON,
Rear-Admiral, U. S. Navy,
Commander in Chief U. S. Naval Force on Asiatic Station.

Commander C. H. WEST,
U. S. Navy, U. S. S. Princeton, Cavite, P. I.

I certify that this is a true copy.

DION WILLIAMS,
First Lieut., U. S. M. C., J. A.

B.

UNITED STATES NAVAL FORCE ON ASIATIC STATION,
FLAGSHIP BALTIMORE,
Manila, P. I., June 30, 1899.

SIR: I transmit herewith charge, with specification, against John Smith, fireman, first class, U. S. Navy, who will be tried before
23 the general court-martial of which you are judge-advocate, ordered to convene on board the U. S. S. "Monadnock," Cavite, P. I., July 3, 1899.

You will summon such witnesses as may be required for his defense.

Very respectfully,

J. C. WATSON,
Rear-Admiral, U. S. Navy, Commander in Chief
U. S. Naval Force on Asiatic Station.

First Lieutenant DION WILLIAMS,
U. S. Marine Corps, U. S. F. S. Baltimore, Manila, P. I.

C.

ASIATIC STATION, FLAGSHIP BALTIMORE,
Manila, P. I., June 30, 1899.

Charges and specifications of charges preferred by Rear-Admiral John C. Watson, United States Navy, commanding United States naval force on Asiatic Station, against John Smith, fireman, first class, United States Navy.

Charge.—Refusing to obey the lawful order of his superior officer.

Specification.—In that the said John Smith, a fireman, first class, in the United States Navy, attached to and serving on board the United States steamer "Yorktown," at Iloilo, Philippine Islands, having, on the twenty-sixth day of May, eighteen hundred and ninety-nine, been ordered by Assistant Engineer Pope Washington, United States Navy,

the officer of the deck, to go on duty in the fireroom of said vessel from noon until four hours post meridian of the said day, he having been previously detailed for this duty, did refuse to obey, and did willfully disobey, the said lawful order of his superior officer, the said Assistant Engineer Pope Washington, United States Navy, who was then and there in the execution of the duties of his office.

J. C. WATSON,
Rear-Admiral, U. S. Navy, Commander in Chief U. S. Naval Force on Asiatic Station.

Witnesses: Lieutenant C. Thomas, U. S. N.; Assistant Engineer Pope Washington, U. S. N.; Chief Machinist G. B. Brownbridge, U. S. N.

I certify that the accused received a true copy of this charge and specification at 10.30 a. m., July 1, 1899.

DION WILLIAMS,
First Lieut., U. S. M. C., J. A.

1.

STATEMENT OF THE ACCUSED.

To the president and members of the court:

I respectfully state that when I was ordered to take the watch in question, from noon to four p. m., on May 26th, 1899, I felt that
24 it was an injustice to me, and that I should not be required to perform more than my common share of the fireroom work.

I had come off watch at 8 a. m.; had worked hard from 8 a. m. until noon in the bilges under hot boilers, and also had my regular watch from 8 p. m. to midnight on that day.

It was my intention, when I refused to take the watch, to see the commanding officer and protest against what I considered this injustice to me, but I became excited and said more than I intended. I realized afterwards that I should have obeyed the order first and then appealed to the commanding officer.

I beg the court, in adjudging my case, to take into consideration the excitement under which I was at the time, and the extra amount of work required of me.

Very respectfully,

JOHN SMITH,
Fireman, First Class, U. S. N.

2.

[Enlistment Record.]

U. S. S. "Yorktown," 3d Rate.

Enlistments, 1897.
Serial Number 30.

Enlistment record of Smith, John, rate, fireman, 2d class; enlisted November 12, 1897, at sea, to serve three years from this date.

Previous naval service, about 3 years. First enlisted Sept. 26, 1894, as F. 2 cl. Served apprenticeship, no; seaman gunner, no; last discharge Nov. 11, 1897, from the U. S. S. "Yorktown," as fireman; holds C. S. C. No. F. D. 12981, and * * * good conduct medals. Trade, fireman; citizenship, U. S.

(Signed) HERBERT WINSLOW,
Lieut. Comdr., U. S. N., Recruiting Officer.

Approved:
C. H. STOCKTON,
Commander, U. S. N.,
Commanding U. S. S. Yorktown, 3d Rate.

(The above to be executed and signed at the rendezvous or on board the vessel where the man is enlisted.)

Record of Smith, John.

[Scale of marks: 0, bad; 1, indifferent; 2, fair; 3, good; 4, very good; 5, excellent. All information required by columns must be entered each quarter; also, upon transfer, discharge, desertion, or death.]

Name of vessel.	Date.	Rate.	Proficiency in rating.	Conduct.		Recommended for hon. discharge.	Recommended for G. C. medal if holds C. S. C.	Rating best qualified to fill.	Offenses or cause of disrating.	Punishments. (Note the date of issue of appointments and change in rating.)	Signature of commanding officer.
				Sobriety.	Obedience.						
Mohican.....	Mch. 31, 98	F. 1 C.	3.5	0	3	No.	No.	F. 1 C.	Drunk aboard ship; sentence S. C. M.	To be confined in single irons on b. and w. for 5 days; to lose 1 mos. pay, amounting to $30.00, and perform 2 mos. extra police duties.	(Sgd.) G. M. Book.
U. S. S. Mohican....	June 30, 1898	"	3.5	2	0	No.	No.	"	Insolence to officer of deck; sentence S. C. M.	Solitary conf't single irons, bread and water, 30 days, full rations every third day; to lose 1 mos. pay, amounting to $36.	(Sgd.) G. M. Book.

I certify that this is a true copy.

DION WILLIAMS,
First Lieut., U. S. M. C., Judge-Advocate.

II.

After the said trial of claimant the following order was issued:

General Court-Martial, Order No. 75.

NAVY DEPARTMENT,
Washington, September 6, 1899.

* * * * * * *

V. John Smith, fireman, first class, U. S. Navy, having been tried by general court-martial on board the U. S. S. "Princeton" and found guilty of "refusing to obey the lawful order of his superior officer" was sentenced "to be confined in such place as the Secretary of the Navy may direct for a period of one year; to perform extra police duties during such confinement; to lose all pay that may become due him during such confinement, except the sum of three dollars ($3.00) per month for necessary prison expenses, and a further sum of twenty dollars to be paid him at the expiration of his term of confinement, when he shall be dishonorably discharged from the United States Navy, total loss of pay amounting to three hundred and seventy-six dollars ($376.00).

25

The sentence was approved by Rear-Admiral Watson, who convened the court. The prison at the navy-yard, Mare Island, has been designated as the place of confinement, the period thereof to take effect from July 7, 1899, the date of approval of the sentence.

* * * * * * *

CHAS. H. ALLEN,
Acting Secretary.

CONCLUSION OF LAW.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the claimant should recover judgment in the sum of three hundred and seventy-six dollars ($376).

X.—*Opinion of the court and dissent.*

OPINION.

NOTT, Ch. J., delivered the opinion of the court:

When this case came before the court upon demurrer (36 C. Cls. R., 304) it was understood that the petition fully and correctly set forth all the material facts of the case, and the court accordingly gave to the case all of the care and consideration which it could command in the belief that the decision would be final. The defendants, however, have come in and the case has gone to trial. The facts now found vary from those upon which the case was previously considered.

The principal question then before the court, and the only question upon which the court passed, was whether a person in the Navy, imprisoned on board a ship, could be brought to trial without having been "furnished with a true copy of the charges, with the specifications" (Rev. Stat., p. 283, sec. 1624, art. 43), and without knowing specifically what they were until he heard them read before the court on the trial. The petition contained an extract from the log book, by which it appears that on the 1st of July, the accused being in confinement, the judge-advocate

of the coming court-martial read the specifications to him. But in the case as now presented it appears by the record of the proceedings of the general court-martial that, "in reply to an inquiry by the judge-advocate, the accused stated that he had received a copy of the charge and specifications preferred against him, 10.30 a. m., July 1, 1899."

Two questions are now before the court: First, whether this recital in the proceedings of the court-martial is sufficient evidence—it not being a part of the judgment of the court—of the admission of the accused that he had received a copy of the charge and specifications preferred against him at a certain time; and, second, whether furnishing a man with a copy of the charge and specifications on the 1st July, who had been in
26 close confinement for an offense committed on the same ship, but at another place, since the 26th day of May, was a sufficient compliance with the statute, which requires that "the person accused shall be furnished with a true copy of the charges, with the specifications, at the time he is put under arrest; and no other charges than those so furnished shall be urged against him at the trial." (Art. 43.)

As on the former hearing the court confined its judgment to the first clause of the statute, "the person accused shall be furnished with a true copy of the charges, with the specifications," so on the present hearing the court will confine its decision to the second clause, "at the time he is put under arrest." That is to say, we are considering only the question whether a seaman arrested on board his ship at Iloilo, P. I., on the 26th day of May can be kept in close confinement and carried to Cavite, P. I., and not be made acquainted with the charges preferred against him until the 1st of July following.

For the purpose of this inquiry we assume that the recital before quoted in the proceedings of the court-martial is sufficient evidence of the fact that the charge and specifications were furnished to the prisoner on the 1st of July. But it is not to be understood that the court so decides. That question is one which is by no means free from doubt. The recital is not a part of the findings of the court, of its judgment, of anything which the court did, but a part of the proceedings written up by the prosecuting officer; and the recital is not a statement of a fact, but merely an admission of a fact on the part of the accused. He did not write the admission; he did not dictate it; he did not sign it; he may not have understood it. All that we have is the judge-advocate's understanding of what the prisoner admitted.

For a clearer comprehension of the points involved in this case we must examine the law regulating arrest and confinement.

In the Navy, as in the Army, a man may be arrested by the captain of his ship or the colonel of his regiment and placed in confinement for trivial offences without an assigned reason being given. But here the law comes in and provides that this confinement shall not exceed ten days (Rev. Stat., p. 281, art. 24). A longer confinement for a greater offence can only be imposed upon him by the sentence of a court-martial. The words of the statute are: "Confinement with or without irons, single or double, not exceeding ten days, unless further confinement be necessary, in the case of a prisoner to be tried by court-martial." At the end of ten days one of two things manifestly should happen: Either the prisoner should be released, or it should appear in some way that he is

held to be tried by court-martial. This power to hold a man is unlimited; he may be confined with or without irons, single or double, until he is brought to trial.

But this power of indefinite confinement does not necessarily deprive a man of any legal right or personal safeguard. The law intends that when "confinement be necessary" he may be confined; that he may be rigorously confined "with or without irons, single or double;" that he may be thus kept in confinement until brought to trial; but it does not intend that he shall not have a fair trial or be deprived of any of the means of establishing his innocence.

In the early days of the Navy the original rules and regulations for its government contemplated that some one other than the commanding officer would prefer charges, and that they should be "exhibited in writing to the proper officer" and that "the person demanding
27 the court shall take care that the person accused be furnished with a true copy of the charges, with the specifications, at the time he is put under arrest." The statute then inhibits the court-martial from trying the accused upon any other charges, making, however, provision to prevent a multiplicity of trials for newly discovered offenses, but positively declaring that in such cases of subsequent charges "reasonable time shall be given to the person to be tried to make his defenses against such new charge." (Act 23d April, 1800, 22 Stat. L., pp. 50, 51, art. 38.)

In like manner article 43 of the Revised Statutes (p. 283) guards against a multiplicity of trials. It is in these words:

"The person accused shall be furnished with a true copy of the charges, with the specifications, at the time he is put under arrest; and no other charges than those so furnished shall be urged against him at the trial, unless it shall appear to the court that intelligence of such other charge had not reached the officer ordering the court when the accused was put under arrest, or that some witness material to the support of such charge was at that time absent and can be produced at the trial, in which case reasonable time shall be given to the accused to make his defense against such new charge."

To the court it seems evident that the statute means what it says. The provision that "the person accused shall be furnished with a true copy of the charges, with the specifications, at the time he is put under arrest" can have but one meaning, and that meaning can not be expressed in plainer or simpler or more positive language than that used in the statute. That no other charges "shall be urged against him at the trial" is decisive of the intent. The person accused can not waive the nonfurnishing of the charges because he can not be called upon to plead to them. To hold the accused in confinement that he may be brought to trial upon charges; to bring him into court for trial upon them; to read them to him and call upon him to plead to them is to "urge" them, and to urge them is the only way in which charges against an accused person can be urged.

It has been suggested that the statute is directory and not mandatory. But the initial sentence of the articles (p. 275) declares that "the Navy of the United States shall be governed by the following articles." There is nothing in the forty-third article which indicates that it was

framed for the guidance of courts-martial or which implies that they may disregard its injunctions. "The person accused" is the subject of the article and every line is manifestly for his protection.

It has been suggested that time to prepare for trial is all that the statute accords to the person accused and that if sufficient time be granted to prepare his defense the terms of the statute will be satisfied; but to this there are two answers.

First. The statute contemplates the giving of reasonable time, and invests courts-martial with that power, and enjoins upon them that duty, but limits the authority to grant reasonable time to the "new" charges. There are two rules prescribed by the statute: As to the original charges upon which he was arrested, a true copy is to be furnished to the accused at the time he is put under arrest; as to the new charges not furnished to the accused at the time he was put under arrest, "reasonable time shall be given to the accused to make his defense."

Expressio unius, exclusio alterius.

28 Second. A court-martial is not invested with power or authority to grant time to persons accused. It is convened to try such persons as may be brought before it, and "the court is enjoined to sit from day to day, Sundays excepted, until sentence is given, unless temporarily adjourned by the authority which convened it." (Art 45.) All that a court-martial could do would be to report the facts to the officer who convened the court, and it would be a matter of discretion with him to allow or not allow an adjournment. Assuredly the law never intended that the personal rights and safeguards of any person accused of crime, of crime which might involve property, or liberty, or life itself, should be dependent upon the discretion of a commanding officer.

This forty-third article was first enacted in its present form during the civil war. The history of its enactment throws some light upon the intent of Congress. It is thus sketched in the preceding opinion on the demurrer in this case:

"On the 17th July, 1862, Congress passed two statutes (12 Stat. L., p. 594; ib., pp. 600–604, art. 15), the one relating to the arrest and imprisonment of officers in the Army, the other to the arrest and imprisonment of persons in the Navy.

"These statutes were passed in the midst of a great war and concerning the circumstances which surrounded the former statute and led to its enactment, Mr. Blaine has said:

"'In answer to the call upon the President for information, Mr. Lincoln sent a message to the Senate on the 1st of May, saying: 'General Stone was arrested and imprisoned under my general authority, and upon evidence which, whether he be guilty or innocent, required, as appears to me, such proceedings to be had against him for the public safety.' The President deemed it 'incompatible with the public interest, and perhaps unjust to General Stone, to make a particular statement of the evidence.' After saying that General Stone had not been tried because the officers to constitute a court-martial could not be withdrawn from duty without serious injury to the service, the President gave this public assurance: 'He will be allowed a trial without unnecessary delay. The charges and specifications will be furnished him in due season, and every facility for

his defense will be afforded him by the War Department.' This message on its face bears evidence that it was prepared at the War Department, and that Mr. Lincoln acted upon assurances furnished by Mr. Stanton. The arrest was made upon his 'general' authority, and clearly not from any specific information he possessed. But the effect of the message was to preclude any further attempt at intervention by Congress. Indeed, the assurance that General Stone should be tried 'without unnecessary delay' was all that could be asked. But the promise made to the ear was broken to the hope, and General Stone was left to languish without a word of intelligence as to his alleged offense, and without the slightest opportunity to meet the accusers who, in the dark, had convicted him without trial, subjected him to cruel punishment, and exposed him to the judgment of the world as a degraded criminal.

"'Release from imprisonment came at last by the action of Congress, coercing the executive department to the trial or discharge of General Stone. In the act of July 17, 1862, 'defining the pay and emolu-
29 ment of certain officers,' a section was inserted declaring that 'whenever an officer shall be put under arrest, except at remote military posts, it shall be the duty of the officer by whose order he is arrested to see that a copy of the charges shall be served upon him within eight days thereafter, and that he shall be brought to trial within ten days thereafter, unless the necessities of the service prevent such trial; and then he shall be brought to trial within thirty days after the expiration of said ten days, or the arrest shall cease.'" (Twenty Years of Congress, vol. 1, p. 390.)

"The statute relating to the Navy is, without qualification, broader and more imperative in terms. It has since found its way into the Revised Statutes with no substantial change of phraseology."

It is needless to advert to the many decisions of the Supreme Court holding that statutory regulations governing the proceedings of a court-martial must be complied with. They are summed up in a sentence or two in the case of Brown v. Keene (8 Peters, 112): "The trial, finding, and sentence are the solemn acts of a court organized and conducted under the authority of and according to the prescribed forms of law. It sits to pass upon the most sacred questions of human rights that are ever placed on trial in a court of justice; rights which, in the very nature of things, can neither be exposed to danger nor subjected to the uncontrolled will of any man, but which must be adjudged according to law;" and are reiterated in Runkle v. United States (122 U. S. R., 543).

Finally, it has been said that the statement of the accused set forth in the proceedings of the court-martial is substantially a confession, and that no wrong can be done to a man who is thus self-convicted.

But concerning this so-called "confession," there are two things to be said: First, it did not constitute the only evidence before the court-martial; and, second, the statement shows that a man who had worked hard for four hours "in the bilges under hot boilers, and also had had his regular watch from 8 p. m. to midnight," and being ordered by an assistant engineer to go on duty from noon to 4 p. m., thought that injustice was done to him and "became excited and said more than he intended." It is impossible for this court to believe that upon that statement alone, due regard being given to every part of it, a court-martial

would have sentenced a man "to be confined in such place as the Secretary of the Navy may direct for a period of one year; to perform extra police duties during such confinement; to lose all pay that may become due to him during such confinement, except the sum of $3 per month for necessary prison expenses, and a further sum of $20 to be paid him at the expiration of his term of confinement, when he shall be dishonorably discharged from the United States Navy, total loss of pay amounting to $376."

The judgment of the court is that the claimant recover all of the pay withheld from him under and by authority of the sentence of the court-martial, amounting to $376.

PEELE, J., dissenting:

I dissent from the foregoing opinion for the reasons set forth in my dissenting opinion when the case was submitted upon demurrer (36 C. Cls. R., 325).

30 XI.—*Final judgment of the court.*

JOHN SMITH
v.
UNITED STATES. } No. 21636.

At at Court of Claims held in the city of Washington on the second day of February, 1903, judgment in the above-entitled cause was ordered to be entered as follows:

The court, upon due consideration of the premises, find for the claimant and do order, adjudge, and decree that the claimant, John Smith, do have and recover of and from the United States the sum of three hundred and seventy-six dollars ($376).

BY THE COURT.

31 XII.—*Application for appeal filed by the defendants February 11, 1903.*

JOHN SMITH
v.
UNITED STATES. } No. 21636.

From the judgment rendered in the above-entitled cause on the 2nd day of February, 1903, in favor of the claimant, the defendants, by their Attorney-General, on the 11th day of February, 1903, make application for and give notice of an appeal to the Supreme Court of the United States.

LOUIS A. PRADT,
Assistant Attorney-General.

Filed February 11, 1903.

32 XIII.—*Defendants' motion to set aside judgment and dismiss petition. Filed March 23, 1903.*

Now come the defendants, by the Attorney-General, and move the court to set aside the judgment rendered in the above-entitled cause in favor of the claimant on February 2, 1903, on the ground that the court erred in rendering said judgment for the following reasons:

First. The judgment is for pay to the amount of three hundred and seventy-six dollars alleged to be due to the claimant as an enlisted fireman of the second class of the United States Navy. Long before said judgment was rendered, to wit, on December 13, 1902, the defendants filed a motion in said cause for leave to withdraw their request for findings of fact and to substitute in lieu thereof another request for findings of fact.

Second. None of the various petitions and amended petitions in
33 said cause are signed or verified by the claimant, but each and every one of said petitions has been signed and verified by one George F. Ormsby, who alleges himself to be the attorney of the claimant in the above-entitled cause.

L. A. PRADT,
Asst. Attorney-General.

FELIX BRANNIGAN,
Assistant Attorney.

Filed March 23, 1903.

34 XIV.—*Order overruling defendants' motion of March 23, 1903, to set aside judgment and dismiss the petition. Filed May 25, 1903.*

This case has been twice elaborately argued and carefully considered (36 C. Cls. R., 304; 38 ib.), to wit, when it was determined upon demurrer and upon the evidence. The record states with unusual ful'ness and clearness every fact which will enable the Supreme Court to pass upon the questions of law involved. The amount involved in this case is trivial, but the questions of law presented by it are of very grave importance. The case was selected as one which would present these questions to the Supreme Court with unusual clearness, and the facts now sought to be brought into the case are irrelevent and immaterial and will not change the result. The defendants' motion to set aside the judgment and dismiss petition, filed March 23, 1903, after judgment, accordingly is overruled.

Should the judgment be affirmed by the Supreme Court the defendants may apply for a stay of proceedings until the claimant's attorney shall satisfy the court that he is entitled to have a transcript of the judgment transmitted to the Treasury for payment.

All requests on the part of the defendants for findings of fact, filed before or at the time of trial, will be certified to the Supreme Court.

BY THE COURT.

Filed May 25, 1903.

35 XV.—*Defendants' motion for and allowance of appeal.*

JOHN SMITH
v.
UNITED STATES. } No. 21636.

At a court of claims held January 5, 1904.

Assistant Attorney-General Pradt for the defendants moved the allowance of the application for an appeal filed herein February 11, 1903.

And it was ordered that the appeal be allowed as prayed for.

BY THE COURT.

36 In the Court of Claims.

JOHN SMITH
v.
UNITED STATES. } No. 21636.

I, John Randolph, assistant clerk of the Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the judgment upon demurrer and of the order vacating and setting aside the same, of the findings of fact and conclusion of law filed by the court, of the opinions of the court and the dissenting opinion, of the final judgment of the court, of the motion of the defendants to set aside said judgment, of the order of the court overruling said motion, of the application of the defendants for and the allowance of appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 21st day of January, A. D. 1904.

[SEAL.]

JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsement on cover:) File No. 19222. Court of Claims. Term No. 571. The United States, appellant, *v.* John Smith. Filed January 5, 1904. File No. 19222.

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Office Supreme Court U. S.
FILED
MAY 16 1904
JAMES H. McKENNEY,
Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1903.

THE UNITED STATES, APPELLANT,
v.
JOHN SMITH.
} No. ~~571~~. 184.

MOTION TO ADVANCE.

In the Supreme Court of the United States.

OCTOBER TERM, 1903.

THE UNITED STATES, APPELLANT,
v.
JOHN SMITH.
No. 571.

MOTION TO ADVANCE.

The Solicitor-General moves the court to advance the above case for an early hearing at the October term, 1904.

This motion is made at the express request of the Secretary of the Navy in a letter to the Attorney-General, dated February 20, 1904, in which the following statement is submitted:

> Article 43 of the Articles for the Government of the Navy, section 1624, Revised Statutes, prescribes that—
>
> "The person accused shall be furnished with a true copy of the charges, with the specifications, at the time he is put under arrest; * * *"
>
> Under the decision of the Court of Claims above cited, as this Department understands that decision, the proceedings of a court-martial are illegal and void unless the record shows that the accused was furnished with

a copy of the charges and specifications immediately upon his arrest or apprehension. Smith was furnished with a copy of the charges and specifications, as the record shows, four days before he was brought to trial, but the Court of Claims held that this was not sufficient, and gave judgment in his favor for the loss of pay forfeited by the sentence.

If this construction is correct, a majority of the sentences imposed by courts-martial during the past forty years, and the proceedings of courts-martial now sitting from day to day, would appear to be invalid.

The purpose of this letter is to bring to attention the state of confusion and practical paralysis into which the administration of naval justice will be thrown if this decision is upheld, and, in view of the fact that this Department feels it to be its duty to be guided by rulings and decisions of the courts wherever they interpret the statutes with which the Navy has to do, to ask specifically that the case in question, that of *John Smith* v. *The United States*, be advanced on the docket of the Supreme Court in order that the final and authoritative determination of the question involved may be had at the earliest practicable moment.

This request is preferred in consideration of the significance to the discipline of the Navy of the question raised.

HENRY M. HOYT,
Solicitor-General.

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